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"WHEN THE PRESS COMPROMISES TRUTH, IT CEASES TO BE THE GUARDIAN OF LIBERTY."

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LAWS OF OHIO.
Published by Authority.

[No. 100.] AN ACT
To organize and Regulate independent Militia.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That for the purpose of creating greater efficiency in the Militia system in counties having cities with a larger population than eighty thousand, it shall be lawful for any member of the enrolled militia to embody and organize themselves into independent companies, squadrons, battalions and regiments, in manner and form and subject to the provisions and restrictions hereinafter prescribed- and provided such organization shall be of no charge or expense to the state.

Sec. 2. In each of said counties members of the regularly enrolled militia may organize themselves into companies as hereinafter provided; and each company may ordain and establish such by laws, rules and regulations as they may deem necessary and proper for their good government, and as may not be inconsistent with this act or the constitution of this state or of the United States.

Sec. 3. That in each of said counties companies may unite and form a battalion to be composed of not less than two nor more than five companies, which companies shall be designated by the numbers 1, 2, 3, 4 and 5, and shall consist of not less than forty (40) nor more than one hundred (100) men, rank and file; and in addition to its complement of officers and men on the active roll, each company may receive and enroll from forty (40) to one hundred [100] contributing members, who shall be subject to such contributions, duties and service as may be prescribed by the rules and regulations of the company.

The members of each company shall have power to elect one captain, a first lieutenant and such other officers as is necessary; and when two companies shall have been duly organized and united, they shall have power to elect a major, an adjutant, a quarter master, a pay master, and a surgeon; and when four companies shall have united, they shall have power to elect a lieutenant colonel; and when more than five companies shall have been duly organized and united, they may form and organize themselves into a regiment and elect a full complement of regimental officers, all of which said officers so elected shall be commissioned and qualified as officers of like grades in the volunteer militia of the State, and at any meeting of parade the senior officer present shall preside or have command.

Sec. 4. That said companies or other organizations as herein provided, shall be separate from and independent of any and all other military organizations and commands whatever in the state, and shall be subject solely to the direct call of the governor of the state and of the regularly constituted civil authorities, for the suppression of insurrection and riot, or the repelling of invasions or the enforcement of the execution of the laws according to the provisions of the constitution and laws of the state, and in all cases of demand or requisition for a military force by the mayor or sheriff, it shall be by application to the superior commissioned officer in rank at the time present in the city, town, or county where such service is required.

Sec. 5. All such companies, battalions and regiments when organized, shall be armed and drilled as near as practicable in accordance with the system of the United States army for like organizations; and while in actual service shall be governed by the principles of the military laws of the state, and rules and articles of war of the United States.

Sec. 6. Every battalion or regiment shall immediately upon its organization, fix certain days not less than three in number, upon which in each and every year, and at such hours as may be specified, it shall meet for parade and military exercises.

Sec. 7. Every battalion or regiment shall once in each year during the months of July, August or September, hold an encampment to continue not less than than three days; and the officers and soldiers forming such encampment, shall be drilled in accordance with the requirements of the rule and usages of the United States army; and when practicable, to be inspected by the adjutant general, and the commandant shall cause five days public notice to be given of the time and place of such encampment.

Sec. 8. Every active and contributing member of such independent companies shall while a member of such company, be exempt from labor on the public highways of this state and from service as jurors; and every member who shall have been held to duty, during a period of five years, shall be entitled to a certificate from his commandant showing such service, and shall be exempt from military duty in time of peace.

Sec. 9. Such independent companies shall be entitled to the use of the public arms of the state subject to the same obligations and restrictions as those imposed upon other military organizations in the state.

Sec. 10: The style of the uniform shall be such as each company may adopt, provided that the uniform of all companies organized into a battalion or regiment shall be one and alike, and the uniform of battalion, and regimental officers shall correspond therewith.

WILLIAM B. WOODS,
Speaker of the House of Representatives.
MARTIN WELKER,
President of the Senate.

March 26, 1859.

[No. 102.] AN ACT
To amend an act entitled "an act to provide for the recording of Land Patents," passed March 14th, 1836.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That the act entitled "an act to provide for the recording of land patents," passed March 14th, 1836 be so amended as to read as follows:

Sec. 2. All patents for lands lying within the State of Ohio granted to any person or persons by the President of the United States, and all copies of such patents duly certified under the official seal of the commissioner of the general land office of the United States, and all exemplifications of the record upon the general land officer aforesaid of any patent recorded there, may be recorded in the office of the recorder in the proper county in which such lands, or any part thereof, are situated, and the recorder shall be allowed the same fees for recording such patents as are or may be allowed for the recording of deeds and other instruments of writing.

Sec. 3. Copies of such record heretofore or hereinafter made, duly certified by the recorder under his official seal, shall be recieved in all courts and places within this State as prima facie evidence of the existence of such patents, and as conclusive evidence of the existence of such record.

Sec. 4. That the original act entitled "an act to provide for the recording of land patents," passed March 14th, 1836, be, and the same is hereby repealed.

Sec. 5. This act shall be in force from and after its passage.

WILLIAM B. WOODS.
Speaker of the House of Representatives.
MARTIN WELKER,
President of the Senate.

March 26, 1859.

[No. 104.] AN ACT
To punish Trespasses on public and other lands.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That any person who shall wrongfully, and without lawful authority cut down, fell, box, bore or otherwise injure or destroy any living tree or trees standing or growing on the lands of the state of Ohio, or of any public or private incorporate company or of other person or persons, or otherwise tresspass thereon, shall, on conviction thereof, be fined in any sum not exceeding one hundred dollars nor less than one dollar, or be imprisoned in the county jail not exceeding twenty days, or both at the discretion of the court.

Sec 2. All prosecution under this act shall be by indictment before the Court of Common Pleas in the county where the offence shall have been committed: provided, that on complaint before a justice of the peace of the county where any offence shall have been committed, if the offender elect to plead guilty the justice may at his discretion, enter his plea and proceed to pass sentence, and cause the same to be carried into execution.

That the act entitled "an act to punish trespasses on the public lands," passed March 31st, 1837, be and the same is hereby repealed: provided, that this repeal shall not affect any offense heretofore perpetrated contrary to the provisions of said act, but the same may be prosecuted as if this act had not been passed.

WILLIAM B. WOODS.
Speaker of the House of Representatives,
MARTIN WELKER.
President of the Senate.

March 26, 1859.

No. 107. AN ACT.
To amend and supplementary to an act entitled "An act to provide for the establishment and government of Reform Schools," passed April 2, 1858.

Sec. 1. Be it enacted by the General Assembly of the State of Ohio, That the board of commissioners for reform schools are hereby authorized to expend upon the buildings now erected upon the State Reform Farm, twelve hundred dollars in addition to the amount fixed by law in section nine of the act to which this act is supplementary: provided that such additional expense shall be confined to useful and necessary improvements.

Sec. 2. Any person that shall entice any youth detained upon the State Reform Farm, to escape, or aid and abet him in his escape, or shall, after his escape, knowing him to be a fugitive from said State Farm, harbor him, shall on conviction thereof, be deemed guilty of a misdemeanor, and be fined in a sum not exceeding one hundred dollars, or confined in the county jail for a period not exceeding six months or both at the discretion of the court.

Sec. 3. The State Reform Farm is hereby declared to be a special road district, and the cheif officer upon said farm is hereby vested with all the powers of a supervisor of roads for said district. He is authoris thorized to alter the public roads upon said farm in such manner as shall be found necessary for the general plan and outline of the same: provided however that no alteration shall be made by which existing roads shall be greatly lengthened, or their grade materially increased, or their general use to the public materially impaired: and provided further, that such alterations be approved by the county commissioners of the county of Fairfield.

Sec. 4. The city council of any city in this State are hereby authorized to apply such pecuniary aid as they may deem proper, but not to exceed three thousand dollars in any one year, towards the establishment of one or more reformatories in said city, of such character as is fixed by law in sections sixteen and seventeen of the act to which this is supplementary.

Sec. 5. That section six of the act to which this act is supplementary be so amended as to read as follows: Sec. 6. The said board of commissioners shall continue to consist of the three members now appointed for the period of their appointment, and their powers and duties shall be as designated in this act. Their successors shall be appointed by the governor, by and with the advice of the senate, one of their number being designated by the appointing power aforesaid, acting commissioner, and all of them to hold their offices for three years from the day of their appointment, and until their successors are appointed and qualified, unless vacancies occur from death, resignation or removal, for cause as herein provided.-- Said commissioners shall, before entering upon the duties of their office, take an oath or affirmation as required by the constitution of this state, and also give such bond in such amount, and with such security, as may be approved by the governor, said bond to be deposited with the treasurer of state. The acting commissioner shall receive a salary not exceeding eighty four dollars per month, to be paid quarterly, and to be fixed by the said board of commissioners by and with the advice and consent of the governor, but no other fees, perquisites, or personal expenses whatever, and the two advisory commissioners shall receive five dollars per diem for the time actually employed, but no traveling or other expenses or fees whatever. The acting commissioner shall reside on the farm and devote all his time to the duties of his office. The board may appoint a matron to reside upon the farm upon a compensation not exceeding two hundred dollars per annum. The board shall meet at least once a month; but no per diem shall be paid to any commissioners for more than forty-five days in any one year; and the salary and per diem shall be paid out of the treasury of the state, on the order of said board of commissioners upon the warrant of the auditor of state.

Sec. 6. Sections 6, 18, 19 and 20 of the act to which this is amendatory, are hereby repealed.

Sec. 7. This act shall take effect upon its passage.

WILLIAM B. WOODS,
Speaker of the House of Representatives.
MARTIN WELKER,
President of the Senate.

March 26, 1859.

No. 111. AN ACT.
To amend the act passed March 17, 1856, supplementary to an act passed March 2, 1853, to provide for draining and reclaiming certain Swamp and Overflowed Lands.

Sec. 1. Be it enacted by the General Assembly of the State of Ohio, That section one of the act passed March, 17, 1856, entitled "an act supplementary to an act entitled "an act to provide for draining and reclaiming swamp and overflowed lands granted to the state of Ohio, by an act of congress approved September 28, 1850,' passed March 2, 1853," be so amended as to read as follows: Section 1. That the county commissioners of any county in which any such swamp or overflowed land may be situate, and for the draining and reclamation of which contracts have heretofore been or shall hereafter be let, under the provisions of the act to which this is supplementary, may, at their discretion, renew or extend the time of performance of such contracts when the same have expired or are about to expire by the limitation of said act, upon the same terms as originally made, said contracts not to be renewed or the time of performance thereof extended, for a term of more than two years beyond the time of their expiration under the act to which this is supplementary.

Sec. 2. That the first section of the act to which this is amendatory be and the same is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its passage.

WILLIAM B. WOODS.
Speaker of the House of Representatives.
MARTIN WELKER.
President of the Senate.

March 26, 1859.

No. 208.] AN ACT
To relieve the Sureties of Executors or Administrators.

Section 1. *Be it enacted by the General Assembly of the State of Ohio,* That it shall be lawful for any surety of any executor or administrator of any deceased person at any time to make complaint to the proper probate court to be released from the bond with such executor or administrator, by filing his request therefor with the Judge of said court, and giving at least five days' notice in writing to such executor or administrator, when such court is of opinion there is good reason therefor, shall release such surety, and if such executor or administrator fail to give new bonds, as by such court directed, he shall be removed and his letters superceded, but such original surety shall not be released until such executor or administrator so gives bonds, and such original surety shall be liable only for the acts of such executor or administrator from the time of the execution of the original bond to the filing of the second bond: Provided, that the cost of such release shall be paid by the surety applying to be released, unless it shall appear to the court that the administrator or executor is insolvent, incompetent, or is wasting the assets of the estate.

Sec. 2. This act shall take effect from and after its passage.

WILLIAM B. WOODS,
Speaker of the House of Representatives.
MARTIN WELKER
President of the Senate.

April 6, 1859.

No. 209.] AN ACT
Explanatory of an act entitled an act to amend section twenty three of an act entitled "an act to provide for the organization, supervison and maintenance of Common Schools, passed March 11th, 1853, passed March 12, 1859.

Section 1. *Be it enacted by the General Assembly of the State of Ohio* That the provisions of the act entitled "an act to amend section twenty three of an act entitled 'an act to provide for the organization, supervision and maintenance of common schools, passed Mar. 11th, 1853, passed April 12, 1858, shall be so constructed as to authorize the levy of a tax upon any sub district for the purpose of completing the erection or repair of any shoolhouse in such sub district which was in process of erection or repair at the time said act, passed April 12th, 1858, took effect, or for paying debts incurred therefor.

WILLIAM B. WOODS,
Speaker of the House of Representatives.
MARTIN WELKER,
April 6, 1859. President, of the Senate.

No. 210. AN ACT
To repeal an act passed April 11th, 1856, entitled "an Act supplimentary to an act entitled 'an Act to authorize Free Banking in Ohio,' passed March 21st 1851."

Section 1. *Be it enacted by the General Assembly of the State of Ohio,* That the act passed April 11th, 1856, entitled "an act suplementary to an act entitled 'an act to authorize free banking in Ohio,' passed March 21st '51," be and the same is hereby repealed: Provided, that such repeal shall in no wise affect any liabilities, civil or criminal, incurred under the said section so repealed, nor any proceedings under them.

Sec. 2. This act shall take effect on its passage.

WILLIAM B. WOODS,
Speaker of the House of Representatives.
MARTIN WELKER,
President of the Senate.

April 6, 1859.

[No 211] AN ACT.
Regulating the mode of Aministering Assignments in Trust for the Benefit of Creditors.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That when any person shall make an assignment to a trustee, of any property, money, rights or credits, in trust for the benefit of creditor, it shall be the duty of said trustee, within ten days after the delivery of the assignment to him, and before disposing of any property, so assigned, to appear before the probate judge of the county in which the grantor resided at the time of executing the said assignment, produce the original assignment, or a copy thereof, cause the same to be filed in the probate court, and enter into an undertaking in such sum, with such sureties as shall be approved by the said judge, conditioned for the faithful performance by the said trustee of his duties according to law.

Sec. 2. If any assignee as aforesaid shall not, within ten days after his nomination to such trust, comply with the provisions of the first section of this act, it shall be the duty of the probate judge, on application of the assignor or any one or more of his creditors, to remove the said assignee and appoint another in his stead, who shall thereupon immediately comply with the provisions of the foregoing section; and the probate judge shall make and enforce all necessary orders to put the said trustees so appointed, into possession of any property, money, rights, or credits belonging to the assignor at the time he made said assignment.

Sec. 3. Every assignee within the provisions of this act shall, within thirty days after entering upon the discharge of such trust, unless for good cause shown the probate judge shall allow a longer time, file in the office of the probate judge an inventory verified under oath of the property, money, rights and credits of the said assignor which shall have come to his possession or knowledge; and the property and assets comprised in the inventory shall be appraised by three suitable, disinterested persons, who shall be appointed by the probate judge and sworn to a faithful discharge of their trust, and if any part of such estate or effects be in any other county, any disinterested justice of such county may appoint the appraisers of the estate and effects therein.

Sec. 4. Every assignee shall also, at the same time when he files said inventory file a schedule verified under oath of all debts and liabilities of the assignor, within his knowledge, and shall cause notice to be given in some newspaper of general circulation within the county, for three successive weeks of his appointment as assignee, and requiring creditors to present their claims.

Sec. 5. The assignee shall procede at once to convert all the assets received by him into money, and to sell the real and personal property assigned, either for cash, or upon such other terms as the probate judge in his discretion may order, at public auction, at such time and place as may be designated in notice given by advertisement in some newspaper of general circulation within the county, for six successive weeks, and of which sale due return shall be made to the judge, but all sales of real estate shall be made at not less than two-thirds the appraised value thereof, being subject to re-appraisement as upon executions at law, and such sales shall be set aside or confirmed as the probate judge shall order, and if confirmed, deeds shall be made to the purchasers, conveying the title free from all liens on the same for debts due by the assignor.

Sec. 6. The assignee shall within six months after his appointment, and sooner if required by the probate judge, report what claims, if any, against the assignor have been presented, not included in the schedule filed, and what claim, if any; he is unwilling to allow; and thereupon, notices of such disallowance shall be served upon the claimants, as in case of a summons in a civil action, or by advertisement as to non residents, as allowed by the code of civil procedure in other cases; and such claimants shall be required within thirty days after such notice, to commence an action against said assignee, in some court of competent jurisdiction within the county, to enforce the claim, creditors shall present their claims within six months after the publication of the notice provided for in section four of this act, to the assignee for allowance and the assignee shall endorse his allowance or rejection thereon, and claimants whose claims are rejected shall be required to bring suit against the assignee to enforce such claims within thirty days after the same shall have been rejected, in which if he recover the judgment shall be against the assignor, that he allow the same in the settlement of his trusts, with or without costs as the court shall think right; provided, however, that the assignor may make any defence to such action that the assignee might have made to a suit instituted against him before the assignment for the same cause of action.

Sec. 7. The assignee shall also at the same time, and as often afterwards as may be required, report the sums collected by including those arising from sales, together with the amount remaining uncollected, and the amount thereof which in his opinion may be thereafter collected.

Sec. 8. If the assignee or creditor shall file in the probate court a written requisition on the assignee to disallow any claim or claims presented, which he has not reported as disallowed, and shall enter into an undertaking with surety or sureties to be approved by the probate judge, conditioned to pay all the costs and expenses of contesting the same, such claim or claimes shall be ordered to be disallowed, and the same proceedings shall be had as required in other cases of disallowance by the foregoing section.

Sec. 9. The probate court shall order the payment of all incumbrances and lines upon any of the property sold, or rights and credits collected out of the proceeds thereof, according to priority.

Sec. 10. At the expiration of eight months from the appointment and qualification of the assignee, and sooner if it can be done with regard to the rights and interests of all parties, and as often afterwards as may be deemed proper by the probate judge, a dividend shall be declared payable out of the assets of the assignors, applicable to payment of non preferred claims and balances of claims equally amongst all the creditors entitled in proportion to the amounts of their respective claims there on, including those disallowed as to which the claimant has began proceedings to establish the same, as required in the sixth section of this act; of the making of which dividend, and of the time and place of payment thereof, notice shall be given by advertisement in a newspaper, and in such other way as the probate judge may direct; of the payment of which dividends and those remaing uncalled for and unpaid at the time, report shall be made within sixty days after the day fixed for the payment of the same. The probate judge shall then cause a new notice to be given to the owners of the unpaid dividends, by publication and such other mode as he shall direct; and if the same are not demanded within twelve months thereafter, the same shall be divided pro rata among the other creditors until they are paid in full, and the remainder, if any, to the assignor or his legal representatives. The dividends reserved for claims disallowed, where the proceedings to enforce their allowance have been commenced, shall be held until said proceedings have terminated, when they shall be paid, if the allowance of the claim has been ordered, upon the same; otherwise, they shall be distributed pro rata amongst other creditors not paid in full, or refunded to the assignor, as the case may require.

Sec. 11. Before any dividend is declared, the costs and expenses of administering the trusts of the said assignment, including a reasonable compensation to the assignee, and his counsel fees and other expenses, as may be allowed by the probate judge, shall be paid out of the trust fund.

Sec. 12. In case the assignee or any creditor have reason to believe, and make affidavit thereof, that the assignor has not surrendered all the property or effects embraced in the assignment; or that he has property or effects which he conceals and refuses to apply to the payment of his debts; or that he has conveyed or assigned any property or effects for the purpose of hindering, delaying or defrauding his creditors, or that he is about to do so; or that he has converted any property and effects into moneys and credits for the purpose of putting them beyond the reach of his creditors, or the jurisdiction of the courts of the conuty, or is about so to do, the probate judge shall cause him to appear in open court or before a referee and answer under oath all interrogatories concerning the same; and may make all necessary orders upon proper parties to prevent further transfers and changes in any property and effects which he thinks belong to the debtor and should be applied to the payment of his debts. but no such order shall have the effect to alter the title or possessions of any property or effects claimed or possessed by any third person.

Sec. 13. Every person presenting and filing a claim against the estate of the debtor, and before the same shall be allowed or any payments made thereon, shall make and file the affidavit setting forth that the said claim is just and lawful, what collateral or personal security, if any, the claimant holds for the same, or that he has no security whatever, and the assignee or any creditor shall have the right to examine the claimant under oath touching any such collateral or other security, or any other matter relating to said claim, within such time and under such regulations as shall be prescribed by the probate judge.

Sec. 14. The probate judge shall have the right at any time to remove any assignee for good cause and to appoint another in his stead, and to make and enforce all orders necessary to cause the property and effects to be delivered to the new trustee, and to require new undertakings with additional sureties, and an application made by any surety or sureties of any assignee, may, if satisfied of the reasonableness of such appliction, discharge such surety or sureties from further liability and require that said trustee shall be removed or give new sureties.

Sec. 15 Nothing in this act shall be so construed as to require any property exempt from execution to be delivered up for payment of debts, or authorize any property belonging to the wife before marriage, and not converted to the husband's use, to be taken in payment of the debts of her husband.

Sec. 16. All assignments in trust to a trustee or trustees, made in contemplation of insolvency, with the intent to prefer one or more creditors, shall inure to the equal benefit of all creditors in proportion to the amounts of their respective claims, and the trusts arising under the same shall be administered in conformity with the provisions of this act.

Sec. 17. All transfers, conveyances or assignments made with the intent to hinder, delay or defraud creditors, shall inure to the equal benefit of all creditors in proportion to the amounts of their respective claims, and the probate judge, after any such transfer, conveyance or assignment shall have been declared by a court of competent jurisdiction to have been made with intent aforesaid, on the application of any creditor shall appoint an assignee according to the provisions of this act, who, upon being duly qualified, shall proceed by due course of law to recover possession of all property so transferred, conveyed or assigned, and to administer the same as in other cases of assignments to trustees for the benefit of creditors.

Sec. 18. This act shall apply to all assignments made by any partnership, joint stock association or body corporate, and as far as practicable to all trustees of trusts for the benefit of creditors heretofore appointed, and all trustees appointed and acting under the provisions thereof shall have power, by the direction of the probate judge, to compound and compromise any debt, claim or demand on behalf of his assignor that in his opinion cannot be otherwise recovered or collected.

Sec. 19 The act entitled "an act declaring the effect of assignments to trustees in contemplation of insolvency," passed March 14th, 1853, be and the same is hereby repealed.

Sec. 20. The probate judge shall be entitled to the following fees for services performed under this act: for filing copy of assignment, schedule and inventory, ten cents each, and for all other papers, five cents each; for appointing or removing any assignee, one dollar; for hearing and deciding applications by an assignee for the benefit of this act, two dollars, and for all other services performed under this act, the same compensation as is provided by law for like services in the settlement of estates of persons deceased.

Sec. 21. In all cases of assignments made before the passage of this act, and where no final settlement and distribution has been made; the probate judge of the proper county shall have the power, on the application of any creditor of the assignor, to issue a citation against such assignee, requiring him to appear before such probate judge on the day named in such citation, to show cause why he should not give bail for the execution of his trust according to the provisions of this act, and such probate judge on good cause shown may require such assignee to give bail according to the provisions of this act; and in case such assignee shall fail to appear as required by such citation, or shall fail to give bail within the time ordered by such probate judge, such probate judge shall remove him and appoint another assignee, and after the giving bail by any assignee, as provided in this section, the same proceedings shall be had as provided in this act in case of assignments after the passage of this act.

Sec. 22. This act shall take effect from and after its passage.

WILLIAM B. WOODS,
Speaker or the House of Representatives.
MARTIN WELKER,
President of the Senate.

April 6, 1859.

No. 213. AN ACT
To authorize the County Commissioners to alter or change the boundaries of Election Precincts.

Section 1. *Be it enacted by the general Assembly of the State of Ohio,* That the commissioners of any county in this state, upon presentation to them at any regular session of their board, of a petition signed by not less than twelve legal voters of any voting precinct in any township therein, that any line or lines bounding said precinct be changed or altered, upon being satisfied that the prayer of said petition is just and reasonable, and that due notice thereof has been given for twenty days by posters either written or printed in three public places in each precinct to be affected by such change; grant the prayer of such petition by an order that such precincts be changed in accordance therewith.

Sec. 9. This act to be in force on its passage.

WILLIAM B. WOODS,
Speaker of the House of Representatives.
MARTIN WELKER,
President of the Senate.

April 6, 1859.

No, 182. AN ACT
Conferring certain powers on, and prescribing certain duties of, the Board of Public Works.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That the board of public works shall have charge of the public works of the State, and shall have power to perfect, render useful, keep in repair, and protect the same; and to that end shall have power to remove obstructions therein or thereto, and to make such alterations or amendments thereof, (whether now or hereafter constructed,) and to make such feeders, dykes, reservoirs, locks, dams, & other works, devices & improvements as they may think proper for the respective purposes aforesaid. That each member of said board shall have the like powers, in respect to the division of the public works under his special charge, subject however, to the control of the board; but he shall not undertake the construction of any new work whose cost would exceed two thousand dollars, without the previous direction of the board. That to enable them to exercise the powers aforesaid, it shall be lawful for the board and each member thereof, within his proper division, to purchase in the name and on behalf of the state such real and personal property, rights or privileges, as may be necessary for the respective purposes aforesaid; and also, to agree with any owner whose property may be hereinafter mentioned, upon the sum of money to be paid by the state as compensation therefor, and to pay the same in the manner designated by law. And it shall also be lawful for the board, and each member thereof, and every superintendent, agent or engineer employed by them or him, to enter upon, take possession of and use, upon the conditions and subject to the limitations hereinafter prescribed, any lands, waters, streams or materials necessary for the respective purposes aforesaid, doing, nevertheless, no unnecessary damage. And they may also enter upon any lands for the purpose of making surveys or taking any levels that it may be necessary or expedient to make or take, in the discharge of their respective duties.

Sec. 2. Private property may be appropriated for the respective uses specified in the first section of this act, as follows: when the public use to be made of the property would render it substantially valueless to the owner, all estates therein, or rights thereto, may be appropriated and upon the proper proceedings being had as hereinafter provided, shall vest in the state. When the public use of the property will be temporary, or at intervals only, or when for any other reason it may be unnecessary or inexpedient to appropriate the fee simple therein or absolute right thereto, an easement, or right, commensurate with the use to be made thereof, may be appropriated; a good and sufficient title to which easement, or right, upon the proper proceedings being had as hereinafter provided, shall vest in the state. When a breach, other injury or obstruction destructive of or materially impairing the immediate use of any of the public works, (by which term is meant not only the main works, but also all other works, structures or devices connected with or appurtenant thereto,) shall happen, or exist, or be in immediate danger of happening, or when such breach, injury or obstruction, or danger thereof, shall occur in any work in process of construction, and repairs or protection shall be necessary for the preservation or restoration of the same, such cases, all and singular, shall be deemed cases of public exigency justifying the immediate seizure of private property to repair or protect such works, or to be used permanently or temporarily, as places of deposit of materials for those purposes, or of matter removed in making such repairs or protection. In all other cases provided for by this act, a compensation for the property to be appropriated shall first be made in money, or first secured by a deposit of money, as hereinafter provided.

Sec. 3. The mode of making appropriations under this act shall be as follows: In a case of public exigency, as defined in the preceding section, the private property necessary to repair or protect the public work may be seized either absolutely or for a temporary purpose, by the board aforesaid, or either of their members, or any one of their superintendents, agents or engineers, and the rights thereto; or to such temporary use, shall immediately vest in the state. In all other cases the appropriation shall be made by the board; or one of the members thereof. In such case of public exigency, if the property be immediately seized without first paying for the same it shall be the duty of the board, or some one of their members, (if the compensation to be paid therefor, be not agreed upon with the owner,) without delay to make and officially subscribe as many certificates, in all respects alike, as may be necessary, containing: First: A description of the property so taken, with the time or times when taken, and whether taken absolutely or for temporary use, and if the latter; the extent of the use, and the name or names of the owner thereof. Secondly: An offer on the part of the state to pay therefor a specific sum of money, being such sum as the board, or their member shall deem reasonable; one of which certificates shall be delivered to each of the owners of the property so taken, if resident within this state, or left at his or her usual place, of abode therein; provided, that if any owner be a minor, idiot or insane person, having a guardian resident within this state, service of said certificate, in manner aforesaid, shall be made on such guardian, which shall be deemed good service upon the ward. But if any owner or guardian reside without this state, or his place of residence be unknown to the board, then notice to him or them may be given either by personal service of such certificate, or by publishing the same for four consecutive weeks in some newspaper of general circulation in the county wherein the property was taken. One of said certificates, with proof of its having been served or published as aforesaid, and the date of such service or publication, shall be filed and preserved in the office of the board. If any owner, or his or her guardian as aforesaid, shall at any time after the seizure of his or her property as aforesaid, and within one year after the service of the certificates as aforesaid, or its last publication as aforesaid as the case may be, elect to take the sum of money so offered, or, in case of joint ownership or tenancy in common, his or her proper proportion thereof, the board or the proper member thereof shall pay, or cause the same to be paid to him or her, and shall take thereof a receipt specifying on what account the same is paid; and such payment shall discharge all claims of such owner against the state by reason of the premises. But if he or she shall be unwilling to accept said offer of compensation, he or she may, within the year aforesaid, notify the board or the proper member thereof, (namely, the member having special charge of the division where the property was taken,) of such unwillingness, and if the board, or said member, and the owner cannot agree upon the compensation to be paid, the owner may at any time afterwards, within said year, file in the probate court of county wherein the property taken was situate when taken, or, if it was a tract of land situate partly in one and partly in another county or counties, then in the probate court of either of said counties, one of said certificates, or a copy thereof, (which copy shall be furnished to him or her by the board, or proper member thereof, if demanded) and require the judge of said probate court to empanel a jury to issue a venire for them in the manner hereinafter provided in section four; which venire shall be served and returned as provided in said last named section. Before such venire shall be issued, the owner shall notify the board, or proper member thereof, when it will be issued. Upon such venire being issued, the same proceedings shall be had, so far as the same may be applicable and practicable, in respect to the filling of vacancies, the qualifying of the jurors, the power to administer oaths or affirmations, the making and return of awards, conduct of trials, return of verdicts, exceptions or petitions in error, and all other matters, as are hereinafter provided in respect to cases not of public exigency. In cases other than those of public exigency as aforesaid, the proceedings shall be as follows: the board or some member thereof shall make and officially subscribe as many certificates, in all respects alike, as may be necessary, stating, First. The intention of the state to appropriate the property, use, or easement, describing it as fully and accurately as would be necessary in a conveyance, and also stating the name of the owner or owners thereof. Secondly The specific sum of money that the state is willing to pay therefor, which shall be such a sum as the board, or the member having special charge of the work for which the appropriation is to be made, shall deem reasonable.— Thirdly. That if the owner or owners do not, within a time to be specified in the certificate, (which time such board or member may fix, allowing a reasonable period after service or publication of the certificate, as hereinafter provided,) accept said sum as full compensation for such property, use, or easement, then, after a specified day the State will cause the property intended to be appropriated, or in, to or over which an use or easement is intended to be appropriated, to be condemned to the State, and the value of such property, use, or easement to be assessed pursuant to law. One of said certificates shall be delivered to each of the owners of the property intended to be appropriated; or in, to or over which an use, or easement is intended to be appropriated, his or her guardian, or publication thereof made, in the same manner and under the same circumstances hereinbefore provided, in respect to the certificates first herein mentioned. Another of said certificates shall be filed and preserved in the office of the board with proof of the service of publication thereof, showing the date or dates of such service, or publication, and if the appropriation be of real property or of an easement in or upon such property, and be finally made, it shall be the duty of some member of the board to endorse upon another of said certificates the words "appropriation made," with the date when the appropriation was perfected and to officially subscribe such endorsement and cause such certificate endorsement to be recorded in the recorder's office of the county in which the property is situate. If any owner, his or her guardian, as aforesaid shall at any time before the appropriation mentioned in said certificate shall be made, elect to take the compensation specified in said certificate, or, in case of joint ownership or tenancy in common, his or her proper proportion thereof, the board or proper member thereof, shall cause the same to be paid to him or her, or his or her guardian, and shall take the receipt of such owner or guardian therefor, and upon such payment all the title or right of such owner in or to the property, use, or easement appropriated, shall vest in the state; provided, however, that in case of joint ownership or tenancy in common, when some of the owners or tenants elect, and others do not elect, to take the compensation offered as aforesaid payment to those electing to take may, in the discretion of the board or the proper member thereof, be withheld until the proceedings against those so refusing or failing be terminated, and if upon the termination of such proceedings, the board, or proper member thereof, shall be of the opinion that the amount or amounts assessed, together with those payable to the joint owner or tenant electing to take the offer of the state as aforesaid, would be too great to justify the intended appropriation, it shall be lawful for the board or such member, to pay the costs of said proceedings and refuse to make the appropriation; in which event said costs shall be so paid, and nothing more. And provided, further, that if any owner his or her guardian, electing to take the compensation offered by the state as aforesaid, shall fail to make that election until after proceedings for an assessment shall be commenced as hereinafter provided, he or she shall before recieving such compensation, if required by the board or proper member thereof, pay the costs of such proceedings, or if the proceedings be against others as well as himself or herself, his or her proper proportion of said costs, or he or she may elect to let the state pay the same and deduct it from said compensation.

Sec. 4. If any owner or owners, notified as provided in the next preceding section shall not, within the time specified for that purpose in the certificate mentioned in said section, signify to the board, or some member thereof his her or their acceptance of the compensation offered by said certificate to him, her, them, it shall be lawful for the board, or any member thereof, at any time after the expiration of the time named in said certificate for such owner or owners to accept the offer of the board, to file one of said certificates, with proof of service or publication thereof, in the probate court of the county wherein the property intended to be appropriated is situate, or, if the property be a tract of real estate, situate partly in one and partly in another county or counties, then in the probate court of either of said counties; and thereupon; it shall be the duty of the probate judge forthwith to notify the clerk of the court of common pleas and sheriff of the county of the filing of such certificate; and the said clerk and sheriff shall, within one day after receiving such notice, proceed to draw out of the box containing the names of persons returned to serve as jurors in the court of common pleas, a jury of twelve, in the same manner that juries are drawn for the trial of causes in the court of common pleas, for the purpose of estimating or assessing the damages such owner or owners shall receive by reason of such appropriation; and the said clerk shall immediately return the names of jurors so drawn, to the probate judge, who shall thereupon issue his venire to the sheriff; or in case of his being a party to the proceedings, to the coroner of the county, to summon the jurors so drawn as aforesaid, to attend on some day specified, at the office of said judge, then and there to be empannelled and sworn to render a just verdict, in the manner prescribed by law. And the probate judge shall, at the time of issuing such venire, issue a notice to the several owners of the property described in such certificate, of the time when such jury will meet at the office of said judge for the purpose aforesaid; which notice such sheriff or coroner shall serve upon the party or parties therein named, at the time of serving such venire: provided; that if such owner or owners are non-residents of this state, or are unknown; the publication of the objects and purposes of the proceedings shall be made in some newspaper published in the county, for thirty days next preceding the time named in such venire; which notice shall contain a pertinent description of the property sought to be appropriated, and the name or names of the owner or owners, if the same be known, and the time and place of the proceedings. The probate judge shall have power to issue all subpoenas, and all other necessary process, and to administer all necessary oaths in the execution of this act.

It shall be the duty of the sheriff or coroner; on receiving such venire, to summon the persons therein named, in the same manner as jurors are summoned to attend the court of common pleas; and juries may be challenged and vacancies in the jury filled as in other cases: The jury shall be sworn to well and truly assess the compensation to which the owner may be entitled to by reason of the premises, without deductions for benefits to his or her property. For good cause shown or by consent of the parties, they may be sent in such custody as the court shall direct to view the property; the court appointing the person or persons whose duty it shall be to show it to them; but all testimony shall be given in open court. The state shall be entitled to open and close, in giving testimony, and in the argument.— The verdict shall be in writing, signed by the jurors or their foreman; but the court with the assent of the jurors, may put it in proper form. A new trial shall not be granted, except for misconduct of the jury or for an erroneous ruling by the court. Exceptions may be taken as in other cases to any ruling of the court in matter of law, and a petition of error may be prosecuted in the district or supreme court, if filed within thirty days after the rendition of the verdict, but not otherwise. Such petition shall not be filed without an allowance by the district court or by the supreme court, or a judge thereof. And the proceedings shall not be reversed for any error of form, or other error, not affecting the substantial justice of the case. Upon a reversal of the proceedings, a procedendo may, in a proper case, be awarded, and a new trial had, if the thereby commanded. The probate judge shall record the proceedings in that court, including the certificate of intention to appropriate, and the proof of its service or publication, filed in his office as aforesaid.

Sec. 6. After such appropriation is made, it shall be the duty of the probate judge immediately to make up the cost bill of such proceedings, when the board, or proper member thereof, shall, without any unnecessary delay, pay the same, and shall also pay the adjudged compensation by drawing his warrant upon the auditor in the manner prescribed by law, in favor of the proper party; and if the party entitled to such compensation shall not call for the same, the auditor shall nevertheless issue the proper warrant upon the treasury in his behalf for the same, and shall retain such warrant until called for; and the money shall be taken and held to be deposited in the treasury for the use and benefit of the party entitled to the same, from the date of such warrant; provided, that no interest shall be paid upon the compensation or costs as aforesaid: Provided, that the board or proper member thereof may, at their option, pay the costs and refuse to make the appropriation, if in their or his judgment, the compensation assessed is too great to justify the appropriation.

Sec. 7. Proof of the service or publication of the certificates aforesaid, when required by this act, may be made by the affidavit of any person having personal knowledge of the fact.

Sec. 8. If the property appropriated in a case of public exigency, as herein before provided, or to be appropriated in other cases as aforesaid, shall belong to the heirs, or devisees of a decedent, and the names and places of residence of such heirs or devisees, or of any or either of them, shall be unknown to the board, or the proper member thereof, such persons whose names and places of residence shall be thus unknown, may be described in all and singular, the papers and proceedings aforesaid, as the unknown heir, or heirs, devisee or devisees, as the case may be, of the decedent, naming such decedent, if his or her name be known to the board, or said member thereof. But if the name of such decedent be unknown to the board, or the proper member thereof, or if the names and places of residence of the owners or any of them, (whether holding by descent, devise or purchase,) be in like manner unknown, such owner or owners, whose names and places of residence shall be thus unknown, may be described in, all and singular, the papers and proceedings aforesaid, by the general description of unknown owner, or unknown owners. And such general description shall also be sufficient when residence of the owner, or owners, is without this state.

Sec. 9 Married women, whose property shall be appropriated under this act, shall be capable of doing all things which it may be lawful or necessary for an owner to do in the premises, as fully as if they were unmarried and of full age. And guardians as aforesaid, shall have as full power to act for their wards respectively, as the wards respectively would have, were they under no disability.

Sec. 10. Corporations, in addition to payment for their property, real or personal, appropriated as aforesaid, shall be entitled to compensation for a destruction, total or partial, of the value of any of their franchises directly caused by such appropriation of their real and personal property, as follows: If the value of the franchise be totally destroyed, such value shall be paid and the franchise shall cease to exist; if its value be but partially destroyed, a ratable compensation shall be made. The compensation to be thus paid shall be ascertained, (if not agreed upon by the board or a proper member thereof, and the corporation) at the same time and in the same manner, that the compensation to be paid for the real or personal property of the corporation appropriated as aforesaid, shall be ascertained; and the jury, shall state in the verdict, what is the franchise thus injured or destroyed, and whether the destruction is total or partial; which finding, if not set aside in the mode hereinbefore provided for vacating verdicts, shall be conclusive evidence of the fact, so found, to all intents and purposes.

Sec. 11. The witnesses, clerk, sheriff, coroner, constables and jurors, respectively, for the services required of them by this act, shall receive such fees as they are paid for like services in similar cases. The probate judge shall receive for his services, five dollars in addition to the usual fees for issuing processes and recording the proceedings; the person appointed to show the property and take charge of the jury upon a view as aforesaid, shall receive such fees for their services as the court may allow; and the expenses of conveying the jurors to the places to be viewed, may be allowed by the probate court and taxed as cost. All names drawn from the jury box by the clerk and sheriff, as hereinbefore provided, shall be by them replaced in the box, and the persons whose names were thus drawn shall be liable to service as jurors in the same manner as if they had not been drawn for the special service required by this act.

Sec. 12. By the word "cost" in this act, taxable costs only are meant. Unless otherwise herein provided, such costs shall be paid by the state; but upon proceedings in error, the party failing shall pay the costs in error. Judgment for cost may be given in favor of the state and against the owner by the court in which the proceedings may be pending, when the owner became liable to pay costs as aforesaid. It shall also be lawful for the board, or proper member thereof, to deduct from the compensation to which any owner may become entitled as aforesaid, and which such owner shall not have paid, and if such deduction be made, the board, or said member, shall pay such costs to the persons entitled thereto or the proper clerk for their use.

Sec. 13. Any person whose property has been or may be injured, by any breach in or leakage or overflow of any canal, slackwater, pool, reservoir or other work appertaining to such canal, stillwater, pool or reservoir, or by the want of capacity, or filling up, of any culvert thereof, or the washing away of earth caused by any state dam, under the charge of the board, may at any time within one year from the occurrence of such breach or commencement of such leakage, or happening of the injury occasioned by such culvert or dam apply to the board, or the proper member thereof, for damages. The board, or such member, and the claimant, may thereupon agree upon and appoint three disinterested persons to serve as a commission to consider such claim, but if they cannot so agree, the board or such member, within a reasonable time, shall apply to the governor to appoint three commissioners, and the governor shall make such appointments. The commissions, shall, before entering upon the discharge of their duties, severally take an oath or affirmation, to faithfully impartially discharge the duties of their appointment. They shall have like powers as heretofore granted to probate courts in respect to summoning and qualifying witnesses and all subpoena for witnesses issued by them may be served and shall be returned to them in like manner as if issued by probate courts.

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